



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

2004 DEC 23 AM 10:52

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2004-0040

IN THE MATTER OF:)
)
FARMER'S UNION OIL COMPANY)
OF WOLF POINT, MT) **FINAL ORDER**
d/b/a AGLAND CO-OP)
60 Highway 2 East)
Wolf Point, MT 59201)
)
RESPONDENT)

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 23, 2004
DATE

Alfred C. Smith
Alfred C. Smith
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2004 DEC 23 AM 10:52
REGION 8**

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)	Docket No.: CWA-08-2004-0040
)	
Farmer's Union Oil Company)	
of Wolf Point, MT,)	CONSENT AGREEMENT
d/b/a AgLand Co-Op)	
60 Highway 2 East)	
Wolf Point, Montana 59201)	
<u>Respondent.</u>)	

Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, AgLand Co-op, hereby consent and agree as follows.

1. On June 2, 2004, Complainant issued to Respondent an Administrative Complaint alleging certain violations of section 311(j) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1321(j), as amended by the Oil Pollution Act of 1990.
2. This Consent Agreement shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.
3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives right to a hearing, any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement.
4. Respondent, by executing this Consent Agreement, hereby certifies to EPA that they are now in compliance with each of the relevant provisions of section 311(j) of the Act, 33 U.S.C. §1321(j).

5. Respondent consents to the payment of a civil penalty in the amount of eight thousand seven hundred fifty dollars (\$8,750.00).

6. Respondent agrees and consents to the following:

a. After Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of eight thousand seven hundred fifty dollars (\$8,750.00) in two payments in accordance with the following schedule:

1st payment of \$4,375.00 is due and must be received by not later than 01/05/05;

2nd payment of \$4,375.00 is due and must be received by not later than 01/05/06;

by sending certified or cashier's checks, **payable to "Oil Spill Liability Trust Fund,"** with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

The checks shall reference the name and address of Respondent's facility and the EPA docket number of this action.

b. **Copies of the cashier's or certified checks** shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and Brenda L. Morris (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

7. Respondent further agrees and consents that if Respondent fails to make any of the installment payments on the due date specified Respondent shall:

- a. Pay interest of six percent (6%) per annum on any stipulated penalty amounts or any amounts specified in subparagraph 6.a., above, which will begin to accrue from the specified due date;
- b. Pay a handling charge of fifteen dollars (\$15.00) that will be assessed on the 31st day and each 30-day period that any stipulated penalty amounts or any amounts specified in subparagraph 6.a., above, are due and unpaid; and
- c. Pay an additional penalty of six percent (6%) per annum that will be assessed on any stipulated penalty amounts or any amounts due and unpaid if payment is not received within 90 days of the due date.

8. All late payments received by Respondent will be applied first to the charges specified in subparagraphs 7. a.- c., above, and next to any unpaid principal amount.

9. Should Respondent fail to make a timely payment in accordance with the installment schedule referenced above, or the stipulated penalty schedule in paragraph 24, below, EPA maintains and reserves sole discretion to require Respondent to pay immediately upon notification to Respondent the full amount of any stipulated penalty and/or the full amount of the civil penalty (\$8,750.00) or any portion thereof outstanding plus the handling charge, additional penalty, and interest referenced in subparagraph 7. a. - c., above.

10. The parties agree that Respondent's penalty should be mitigated by a Supplemental Environmental Project ("SEP").

11. Within thirty days (30) days of receipt of a signed Final Order in this matter, the Respondent agrees to undertake the SEP which the parties agree is intended to secure significant

environmental or public health protection and improvements. The SEP is defined in Exhibit A to this Consent Agreement and includes purchasing personal protective gear, decontamination and oil spill containment and recovery equipment for use by the Northeast Montana Health Services, Inc., a non-profit hospital corporation, and the Poplar Fire Department serving the Poplar and Wolf Point communities in Montana.

12. Respondent agrees to complete the SEP by no later than December 31, 2006, and expend a total of not less than sixteen thousand two hundred fifty dollars (\$16,250.00) on the SEP.

13. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

14. Whether Respondent has complied with the terms of this Consent Agreement, including the purchasing of the personal protective gear and decontamination, oil spill containment, and recovery equipment as detailed in Exhibit A shall be the sole determination of EPA.

15. Subsequent to the issuance of the Final Order in this matter, Respondent shall submit Quarterly Reports by the first day of March, June, and October, 2005, and February, May, August, and November, 2006, to:

Brenda Morris, Attorney
US EPA, Region 8ENF-L
999 18th Street, Ste. 300
Denver, CO 80202-2466

and include the following information:

- (i) A detailed description of the SEP activities performed during the month;
- (ii) A description of any problems encountered and the solutions thereto; and
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks.

16. Respondent shall provide Complainant with a SEP Completion Report by no later than January 5, 2007, and mail it to Brenda L. Morris at the address listed above, which shall include the itemized costs of the SEP with copies of purchase orders and receipts or canceled checks evidencing the total expenditure of the SEP of \$16,250.00.

17. Respondent shall maintain legible copies of documentation of any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a period of not less than three years subsequent to the completion of the SEP, and Respondent shall provide the documentation to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. Respondent agrees that failure to submit the Quarterly Reports and/or the SEP Completion Report required by paragraphs 15 and 16 of this Agreement shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties pursuant to paragraphs 22 and 23, below.

19. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act, as amended by the Oil Pollution Act."

20. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible expense for purposes of Federal taxes.

21. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 11 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 12 above, Respondent shall be liable for stipulated penalties to the United States in the amount equal to the difference between the stated cost of the SEP (\$16,250) and the actual amount expended on the SEP.

22. In the event that Respondent fails to submit the Quarterly Reports required by paragraph 15 above, Respondent shall pay a stipulated penalty in the amount of \$25 for each day after the report was originally due until the report is submitted.

23. In the event that Respondent fails to submit the SEP Completion Report required by paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the thirtieth day following the completion of the SEP until the report is submitted.

24. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 6, above. Interest and late charges shall be paid as stated in paragraph 7, herein.

25. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA

26. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

27. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. Nothing in this Consent Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability, if any. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

28. Each undersigned representative of the parties to this Consent Agreement certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

29. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement.

Dec 16 04 09:46a

LAURA CHRISTOFFERSEN

4067875842

p.2

EPA LEGAL

009

In The Matter of: Farmer's Union Oil Company of Wolfpoint, MT, d/b/a Agland Co-op
Docket No. CWA-92-3104-0268
Carlsbad

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8
Office of Enforcement, Compliance
and Environmental Justice, Complainant.

Date: 12/23/04

By: Elisabeth Evans
Elisabeth Evans
Director
Technical Enforcement Program

Date: 12/20/04

By: Michael T. Risner
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 12/23/04

By: Brenda L. Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

AGLAND CO-OP, Respondent.

Date: 12-16-04

By: Dennis Vinger
Dennis Vinger
(Print name of signatory)

In The Matter of: Farmer's Union Oil Company of Wolfpoint, MT, d/b/a Agland Co-op
Docket No. CWA-08-2004-0040
Continued

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8
Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: _____

By: _____

Elisabeth Evans
Director
Technical Enforcement Program

Date: _____

By: _____

Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: _____


By: _____

Brenda L. Morris, Attorney
Legal Enforcement Program

AGLAND CO-OP, Respondent.

Date: 12-16-04

By: _____


Dennis Vinger
(Print name of signatory)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **FARMER'S UNION OIL COMPANY OF WOLF POINT, MT., d/b/a AGLAND CO-OP, DOCKET NO.: CWA-08-2004-0040** was filed with the Regional Hearing Clerk on December 23, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 23, 2004, to:


Laura Christoffersen, Esquire
Knierim, Fewer & Christoffersen, P.C.
P. O. Box 650
20 Broadway
Culbertson, MT

Commander
Finance Center (OGR)
U. S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

And pouch mailed to:

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law Judges
U. S. EPA, Mail Code 1900L
Arial Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

December 23, 2004


Tina Artemis
Regional Hearing Clerk



Printed on Recycled Paper